IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 143 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

MER SARMAN MUNJA

Appearance:

1. Criminal Appeal No. 143 of 1986

MR MA BUKHARI,APP for Petitioner No. 1

ABATED for Respondent No. 1

MR P.M.THAKKAR for Respondents.

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE K.M.MEHTA

Date of decision: 08/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE KSHITIJ R.VYAS)

1. The State has preferred this appeal challenging the judgment and order dated 20.10.1985 passed in Sessions Case No.56 of 1985 by the learned Addl. Sessions Judge,Junagadh acquitting all the seven respondents (original accused) for the offences punishable under section 147, 148, 149, 307, 323, 342, 452, 365, 560(2) read with section 114 of the Indian Penal Code, section 25(1)(iii) of the Arms Act and section 135 of the Bombay Police Act.

2. When the appeal came up for admission, the Division Bench, on 27.3.1986, granted leave and admitted the appeal against respondents no.1,2,3 and 6, but refused leave to appeal as far as respondents no.4,5 and 7 were concerned. However, it appears that the very Bench, later on, on 6.5.1986, passed an order of "Admit" in the appeal. It may also be stated that during the pendency of this appeal, respondent no.1 Mer Sarman Munja expired on 20.12.1986 as can be seen from the death certificate issued by Porbandar Municipality. Therefore, the appeal against respondent no.1 abates. In view of the above, this Court is required to consider the involvement of accused nos.2,3 and 6 in the offence in question.

3. The prosecution case, in nutshell, can be stated as under:

The complainant Liluben, in her complaint Ex. 47, has stated that on the day of the incident, she was present in the house. She saw an auto rickshaw from where the accused came out with sticks and knives; they thereafter took away PW 21 Aamsinh Dhokadsinh. The accused thereafter went in room no.20. The A/1 beat the wife of Aamsinh with back portion of rifle and other accused beat her with sticks. As the son and daughters of PW 21 intervened, they were also beaten by A/2 Gagu Meru and A/6 Bhura Munja by giving blows with back side of rifle. It is alleged that A/1 Sarman Munja gave a fist blow on the nose of Rasila and also took PW 23 Dharajkumari, wife of PW 21 at unknown place where she was beaten severely. It is also alleged that the accused also misbehaved with the daughters of PW 21. At that time, A/2 and A/6 also fired in the air. A/1 threatened them to leave the colony. On the basis of these allegations in the complaint, FIR was registered and chargesheet was submitted in the trial court. The charge Ex. 1 was framed against all the accused for the offences punishable under sections 147, 148, 149, 307,

323, 452, 365, 506(2) read with section 114 of the IPC, section 25(1)(iii) of the Arms Act and section 135 of the Bombay Police Act. All the accused pleaded not guilty and claimed to be tried.

4. The prosecution has examined in all 29 witnesses to bring home the charge levelled against the accused. Out of these 29 witnesses, PW 3,4,6,7,9 to 19 and 22 have turned hostile. In fact, PW 8 and 20 have also not supported the prosecution case. After appreciating the evidence on record, the learned Addl. Sessions Judge, Junagadh, by his impugned judgement and order, acquitted the accused. Hence the present appeal.

5. Mr. M.A.Bukhari, learned APP appearing for the State, after taking us through the evidence of injured eye witnesses, namely Aamsinh PW 21 Ex.37, Dhanrajkumari PW 23 Ex.39 and Rekha PW 24 Ex.41, submitted that they are the injured eye witnesses and there is no reason to discard their evidence. In the submission of learned APP, these witnesses clearly involve the accused in the commission of offence. He has further submitted that merely because there are certain discrepancies in their evidence and their conduct subsequent to the incident is not natural, that fact by itself will not make their evidence unbelievable or unnatural. Learned APP, therefore, submitted that considering the fact that the accused having armed with dangerous weapons, have committed offence of riot by creating an atmosphere of fear and terror, a serious view is required to be taken in the matter.

6. Learned Senior Counsel Mr. P.M.Thakkar, appearing for the respondents accused, on the other hand, supported the reasonings and the ultimate conclusion arrived at by the learned trial judge, in toto.

7. PW 21 Aamsinh Dhokadsinh, at the relevant time, was residing in Port Colony in Room No.1 with his family consisting of his wife and ten children. According to him, on 29.6.1984 at 11.00 p.m., while he was sitting with his family members, he saw auto rickshaw having stopped near his quarter. From the said auto rickshaw, A/1, A/6 and A/7 came out; A/7 was driving the auto rickshaw; A/1, A/5 and A/6 were having fire arms. They started giving abuses to them and threatened that they had come to kill them. A/1 fired from his gun; the bullet passed through the door. A/1 and A/5 thereafter entered his house and started beating his wife and his younger daughter Bina. In the meantime, A/6 and other accused Rama also fired in the air. A/1, while beating

this witness, threatened him to leave the colony. The accused thereafter took out these people from their house. On hearing firing from gun, many people of the village Bobira gathered. A/1 also asked them to get dispersed or else he would fire at them. This witness was thereafter taken in auto rickshaw at the bungalow of A/1. Even in the rickshaw also, A/5 inflicted pipe blows on this witness. Some five to six persons also came in the rickshaw at the bungalow of A/1. This witness, at the point of knife, was asked to write on a piece of paper calling his wife, daughters Indra, Rekha and Chandrika to the bungalow of A/1, if they wanted to save his life. The men of A/1 thereafter went to the colony to bring the wife and children of this witness. However, in the meantime, as the family members of this witness had taken shelter in Room no.20, the men of A/1 did not find them and they informed A/1 accordingly. Thereafter also, this witness was beaten by A/1. This witness was thereafter taken in blindfolded condition. Before making him sit in the rickshaw, again he was beaten with pipe on his back as well as on thigh. After taking round for one-and-half hours, this witness was made to walk in the same condition. Since it was not possible for this witness to walk, the A/1 inflicted knife blows on the head of PW 21. According to this witness, he was made to walk for about two hours. Again this witness was brought to the residence of A/1. This witness was asked by A/1 to bring his wife and children. Thereafter this witness went to the colony in rickshaw where his family members were hiding in room no.20. Thereafter, after half-an-hour, A/1 and other accused came with fire arms and sticks and created an atmosphere of fear and panic. They started pelting stones at room no.20. The complainant Liluben was compelled to disclose the whereabouts of family members at the gun point. According to this witness, his wife and children were dragged and taken to his quarter. From there, his wife was taken to a field. In the meantime, he went to the place where his wife was taken. There he was beaten. Again after returning, this witness was given abuses and he was asked to leave the colony and Porbandar town itself. According to this witness, his wife was brought by the men of A/1 in an unconscious condition. Thereafter in the morning, all had taken treatment in the hospital. He has further stated that on 30.6.1984 as well as on 4.7.1984, he informed police that they had sustained injuries because of family quarrel. However, he and his family left for Jaipur on 11.7.1984. On 31.7.1984, police recorded his statement at Jaipur.

This witness has been cross examined at length.

Reading his cross examination, it appears that this witness was not doing any work since one month prior to the date of the incident. He has further admitted that he was not in a position to give any reason as to why accused wanted him to leave the colony though there was no quarrel between him and the A/1. He has also admitted that none of the accused had taken any objection regarding his stay in the colony.

8. Reading this part of the cross examination of this witness, it is clear that there was no reason for the accused to initiate quarrel with this witness. The manner in which he has narrated the entire incident in the examination-in-chief would lead us to believe that the accused have committed serious offence and had created reign of terror. However, the subsequent conduct on the part of this witness and other prosecution witnesses would make the entire prosecution case a doubtful proposition. If at all the incident had taken place in the manner in which this witness had tried to suggest, he would not have sat idle and would have given his version to the police. Surprisingly, no complaint was filed by this witness even though he was the sufferer. As admitted by him, he was in Porbandar upto 11.7.1984. Upto this time, he had not thought it proper to approach police and to file complaint. It is only when the police had gone to Jaipur on 31.7.1984, i.e. after one month, he narrated in his statement the incident involving all the accused in the commission of offence. This conduct on the part of this witness make his version doubtful and unnatural.

9. We are having the complaint at Ex. 40 which is given by Dhanrajkumari, PW 23, wife of P.W.21 Aamsinh, which was recorded by Police Constable at Sir Bhavsinhji Hospital, Porbandar next day i.e. on 30.6.1984. In the said complaint, she has stated that a quarrel had taken place between her and her husband regarding the job of this witness and the school fees for the children demanded by her. She has alleged that on getting excited in the quarrel, he inflicted injuries with stick on her head as well as on the thighs of both legs. According to her, her husband had also given slaps to their daughter Bina. Since all had sustained injuries, they were admitted in the hospital for taking treatment. However, her daughter and husband were discharged after treatment. Dr. Prafulchandra Chhelawada, PW 2 Ex.14, Medical Officer of Sir Bhavsinhji Hospital, Bhavnagar who had examined PW 21 Aamsinh, PW 23 Dhanrajkumari and Bina, PW 24 has issued medical certificates at Ex. 15, 17 and 16 respectively. As far as PW 21 Aamsinh is concerned, the

doctor found (1)incised wound 1/2" x 1/2" scalp deep on left occipital region and (2) bruise 2" x1" on left in frascapula region. According to doctor, these injuries can be caused by sharp cutting object. Similarly, Ex. 17 is the medical certificate issued for the injuries sustained by Dhanrajkumari wherein it is stated that she had (1)bruise 2" x 1" on right thigh posteriorly; (2) abrasion 1"x1" on right cheek and (3) abrasion 1"x1" on right parietal region. In the medical certificate Ex. 16 issued in respect of injury to Bina, she had a bruise 1"x1/2" on right cheek. Thus, the injuries received by PW 21 Aamsinh and PW 23 Dhanrajkumari clearly go to show that the said injuries were not as a result of the act committed by the accused in the incident. On the contrary, looking to the injuries sustained by these witnesses which are simple in nature, the same would corroborate the incident of quarrel having taken place between the family members in the quarter itself. The exaggerated version given by this witness regarding the injuries, thus, in our opinion, does not get any corroboration from the medical evidence. PW 21 Aamsinh, in his evidence, has also contradicted his police statement wherein he had stated about A/1 having fired at him. In view of this, no reliance can be placed on his evidence regarding firing having taken place on the day in question. After having carefully examined the evidence of this witness, we are clearly of the opinion that the evidence of PW 21 does not inspire confidence and the learned trial judge has rightly rejected his evidence.

10. Similarly, Dhanrajkumari, PW 23, while corroborating the say of her husband regarding the incident has, however, exaggerated injuries caused to her by the accused. According to her, she was dragged from room no.20 at the gun point by pulling her hair and by beating her. In the same condition, she was taken to a field. She was beaten on her head by accused Rama with stick. Her saree was removed; a stick was inserted from her blouse upto her petticoat and she was made to lie down. She was beaten by A/1 on her back and knee with stick and she became unconscious. She has admitted that her statement was recorded on 2.9.1984 at Jaipur. According to her, she gave a false complaint at Porbandar as they were afraid of the accused. If the evidence of this witness is accepted, the doctor would have found number of injuries on her body.However, the medical certificate Ex. 17 suggests only three simple injuries of bruise and abrasion. The doctor has clearly stated that with these injuries, there are no chances of getting unconscious. As per the evidence of Dr. Prafulchandra,

the injuries sustained by PW 21 and PW 23 were quite fresh. In other words, the time of the incident when the injured sustained injuries is not consistent with the medical evidence. Therefore also, doubt arises regarding the evidence of injured eye witnesses. Even though the incident had taken place on 29.6.1984, the statement of this witness Dhanrajkumari was recorded on 2.9.1984 at Jaipur. We are not satisfied about the explanation given regarding delay caused in giving statement.

11. Similarly, Bina who had received bruise injury 1"x1/2" on right cheek has not been examined in the instant case. As per the say of the complainant in complaint Ex. 40, Bina received said injuries when a slap was given by her husband when Bina tried to intervene in the quarrel. The said version in the complaint is corroborated by medical evidence.

12. Thus, reading the evidence of these two injured eye witnesses to which our attention has been invited, we are totally convinced that the injured have given exaggerated version regarding the injuries sustained by them. As per their evidence, they were mercilessly beaten by accused with different weapons. If that was so, they would have received number of serious injuries However, the medical evidence shows that they received one or two simple injuries. Thus, they do not get any corroboration from the medical evidence, thereby making their version a doubtful proposition. Even though many opportunities were there to file complaint against the accused, they did not file any complaint. Their statements were recorded after more than one month which also makes the entire prosecution case weak and unbelievable. The complainant Liluben, PW 3 Ex.81 who gave the complainant on the next day after about 18 hours has also not given convincing reasons regarding late filing of complaint. Apart from that, she was declared hostile and has, thus, not supported the prosecution case. The prosecution, in the instant case, has also not been able to establish the real motive of the accused to commit the crime. The aforesaid discrepancies in the prosecution case, in our opinion, will not lead us to conclude the involvement of the accused in the commission of offence. In our opinion, the learned trial judge was justified in acquitting all the accused. Suffice it to say that we are in total agreement with the reasonings and the ultimate conclusion arrived at by the learned trial judge.

There being no substance in this appeal, it is dismissed. Bail bonds shall stand cancelled.

(Kshitij R.Vyas,J.)

(Kamal M.Mehta,J.)

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